Supreme Court, U.S.
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**IN THE**
**SUPREME COURT OF THE UNITED STATES**
**No. 10-120**

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JAMES D. SCHNELLER,

*Petitioner*,

v.

FOX SUBACUTE AT CLARA BURKE, GARY DRIZIN, M.D., DEBBIE MCCOY, R.N., MARJORIE ZITOMER, G. RICHARD SCHNELLER, T. SERGEANT PEPPER, ESQUIRE, HEPBURN, WILCOX, HAMILTON, PUTNAM, L.L.P., PENNSYLVANIA DEPARTMENT OF AGING, PENNSYLVANIA DEPARTMENT OF HEALTH, DIVISION OF NURSING CARE FACILITIES, GARY LAYMAN, JUDITH FOLAN, SAMUEL J. TRUEBLOOD ESQUIRE, TRUEBLOOD & AMACHER, L.L.P.,

*Respondents.*

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**On Petition for Writ of Certiorari**
**To The Supreme Court of the United States**

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Response of Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire to the Petition for a Writ of Certiorari filed by Petitioner, James D. Schneller

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## I. QUESTION(S) PRESENTED

Has the Petitioner presented a compelling reason for the Court to grant Certiorari to review the Entry of Judgment of the United States Court of Appeals for the Third Circuit given that:

A. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that Petitioner's appeal was dismissed for lack of jurisdiction, absence of private right of action and statute of limitations.

B. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly denied Petitioner's Motion to Supplement the Record.

C. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly denied Petitioner's Motion for Sanctions.

D. The factual record supports the denial of Petitioner's Application for Rehearing *En Banc* by the United States Court of Appeals for the Third Circuit.

E. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law; and,

F. In the instant matter, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court.

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## III. CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In his Petition for Writ of Certiorari, Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, The United States District Court for the Eastern District of Pennsylvania granted a Motion to Dismiss for lack of jurisdiction, absence of private right of action and statute of limitations on June 26, 2009. Petitioner then filed a Motion for Reconsideration on July 10, 2009. He filed a 'Motion to Supplement the Record' to reply to responses for Motion for Reconsideration on August 11, 2009 and a Motion for Sanctions and for costs pursuant to 28 U.S.C. §1927 and F.R.C.P. 11 on September 8, 2009. Plaintiff claimed that false and misleading claims were made in responses therefore reconsideration and sanctions were warranted. Petitioner's Motion for Reconsideration was denied on August 4, 2009. The District Court denied the Motion to Supplement the Record and the Motion for Sanctions on September 8, 2009. On October 8, 2009, Petitioner filed a Motion for Leave to Appeal In Forma Pauperis which was granted, and filed a Notice of Appeal to the

Third Circuit Court of Appeals on December 2, 2009. The United States Court of Appeals for the Third Circuit dismissed Petitioner's Appeal from the Judgment of the United States District Court of the Eastern District of Pennsylvania for lack of jurisdiction on March 8, 2010. Plaintiff filed a Motion for Rehearing *en banc* which was denied on April 2, 2010.

The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

## IV. COUNTER – STATEMENT OF THE CASE

This matter derives from a series of civil actions against defendants in the Courts of Common Pleas of various counties within the Eastern District of Pennsylvania. The cases were dismissed through entries of judgment non pros pursuant to Pennsylvania Rule of Civil Procedure 1042.3. Petitioner unsuccessfully attempted to re-open the cases and/or strike the judgment of non pros. He then appealed this case to the Pennsylvania Superior Court which affirmed without an opinion. The Pennsylvania Supreme Court

denied his petition for allowance of appeal. Finally, the United States Supreme Court denied his petition for writ of certiorari. Schneller v. Fox Subacute at Clara Burke, Et al., 128 S.Ct. 56 (2007). Based upon these allegations of facts, Schneller's Amended Complaint contains the following counts:

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| Count 1A | Violation of the Assisted Suicide Funding Restriction Act of 1997 |
| Count 1B | Civil Action for Deprivation of Rights |
| Count 1C | Conspiracy to Interfere with Civil Rights-Depriving Persons of Rights and Privileges |
| Count 1D | Conspiracy to Interfere with Civil Rights-Obstructing Justice and Intimidating Parties |
| Count IE | Neglect to Prevent Deprivation of Rights and Conspiracy for Deprivation of Rights- Failure to Warn |
| Count 2 | Breach of Contract |
| Count 3 | Breach of Contract |
| Count 4 | Fraudulent and Negligent Inducement of Contracts |

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| Count 5 | Deprival of Due Process, Negligence and Intentional Tort by Government Agency |
| Count 6 | Wrongful Death |
| Count 7 | Survival |
| Count 8 | Intentional Tort- Abuse of Power of Attorney and Advance Health Care Directive |
| Count 9 | Negligence Per Se (Violation of sixty-five state and federal statutes) |
| Count 10 | Battery |
| Count 11 | Battery-Lack of Informed Consent |
| Count 12 | Survival- Negligent and Intentional Infliction of Emotional Distress |
| Count 13 | Survival Action-Damages to Estate of Deceased |

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| Count 14 | Survival-Punitive Damages |
| Count 15 | Negligent and Intentional Tort by Licensed Medical Defendants |
| Count 16 | Negligence and Intentional Tort Against Legal Professional Defendants |
| Count 17 | Fraud and Intentional Misrepresentation |
| Count 18 | Conspiracy |
| Count 19 | Breach of Confidential Relationship |
| Count 20 | Negligent and Intentional Infliction of Emotional Distress |
| Count 21 | Tortious Interference with Present and Prospective Economic Advantage |
| Count 22 | Tortious Interference with Inheritance |
| Count 23 | Punitive Damages |
| Count 24 | Injunctive relief to restrain various defendants from unscrupulous decisions to end life, or to deny the rights granted by law |

On June 26, 2009, the United States District Court for the Eastern District of Pennsylvania dismissed all of his claims for failure to state a basis for jurisdiction and statute of limitations and his case was closed. On July 10, 2009, Schneller filed a Motion for Reconsideration which was denied on August 4, 2009. On August 11, 2009, Schneller filed a Motion to Supplement the Record. On September 2, 2009, he filed a Motion for Sanctions and Costs. His Motion to Supplement the record was denied on September 8, 2009. His Motion for Sanctions and Costs was also denied on September 8, 2009. He filed a Notice of Appeal on October 8, 2009, when he filed a Motion for Leave to Appeal in Forma Pauperis, which was granted on October 27, 2009. Schneller filed a formal Notice of Appeal on December 2, 2009. The Notice of Appeal was dated November 6, 2009.

On March 8, 2010, The U.S. District of Court of Appeals affirmed the orders of the District Court. Schneller's appeal from the District Court's dismissal of his action, denial of his motion for reconsideration and denial of his motion for to supplement the record were dismissed for lack of appellate jurisdiction. He failed to file a timely notice of appeal. Schneller's appeal from the Motion for

Sanctions was also denied. n Schneller now seeks Certiorari in this Honorable Court.

## V. SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit properly dismissed Schneller's Appeal from the District Court's dismissal of the Complaint in its entirety. Schneller failed to file a Notice of Appeal in a timely matter. His Motion for Reconsideration of the District Court's dismissal was denied on August 4, 2009. He was required to file a Notice of Appeal within thirty days of the entry of that order. He failed to file any Notice of Appeal until October 8, 2009, when he filed a Motion for Leave to Appeal in Forma Pauperis, which was granted on October 27, 2009. He failed to file his formal Notice of Appeal until December 2, 2009. Schneller's Motion to Supplement the Record and Motion for Sanctions and Costs do not fall in the category of post-judgment motions which toll the time for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(4)(A). Even if the Court of Appeals had found jurisdiction, the District Court was correct in dismissing Schneller's Complaint for lack of subject matter jurisdiction and untimeliness.

The Court of Appeals for the Third Circuit also properly affirmed the District Court's denial of Schneller's post-judgment motions. The Court of Appeals was correct in affirming the District Court's denial of Schneller's Motion to Supplement the Record. The Court was not obligated to permit a reply under any Court rule. Moreover, Schneller was required to address the allegations made in his Motion for Sanctions and Costs on appeal to the District Court's dismissal of the Complaint. Therefore, the Court of Appeals properly found that Schneller's arguments for sanctions could not be considered for lack of jurisdiction.

The Court of Appeals for the Third Circuit properly denied Schneller's Motion for an *en banc* rehearing. Schneller did not assert any issues of exceptional importance or necessity that warranted consideration by the full court.

The Court of Appeals for the Third Circuit correctly found that Schneller as a pro se litigant may not represent parties other than himself. 28 U.S.C. 1654 clearly states that parties may proceed in federal court "personally or by counsel". Under statutory and case law, Schneller was the sole appellant in his Third Circuit appeal.

Finally, in the Petition for Writ of Certiorari, Schneller fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition

for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

## VI. ARGUMENT

### A. THE COURT OF APPEALS PROPERLY DISMISSED PETITIONER'S APPEAL OF THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT FOR LACK OF APPELLATE JURISDICTION SINCE HE FAILED TO TIMELY FILE HIS NOTICE OF APPEAL.

Schneller argues that the Third Circuit abused its discretion by erroneously dismissing his appeal. Thus, he believes that the Court of Appeals acted contrary to other panel decisions and he was deprived of a full review. He asserts that this matter involves questions of public importance. However, Schneller's appeal was properly dismissed because his Notice of Appeal was filed well outside of the deadline provided by the Federal Rules of Appellate Procedure. Under Fed. R. App. P. 4(a)(1)(A) and 4(a)(4)(A)(iv), a party has thirty days from

the date a court disposes of a motion seeking to alter or amend a judgment to file a notice of appeal. It is well established that "the time limits for filing a notice of appeal are jurisdictional in nature." Bowles v. Russell, 551 U.S. 205 (2007).

The District Court dismissed Schneller's Complaint on June 26, 2009. On July 10, 2009, Schneller filed a Motion for Reconsideration which was denied on August 6, 2009. The District Court's August 6, 2009 order was a final decision. A final decision is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment and that a question remaining to be decided after entry of such a decision does not affect its finality. Budinch v. Becton, Dickinson & Co., 486 U.S. 196 (1988). The time to file a Notice of Appeal from the June 26, 2009 appeal was tolled until the District Court denied the motion for reconsideration. Fed. R. App.P. 4(a)(4)(A)(iv). A timely motion to alter or amend a "judgment" that is an appealable interlocutory order tolls the time for filing a notice of appeal. Marie v. Allied Home Mortg. Corp., 402 F.3d 1 (1st Cir. 2005). *See also*, Lichtenberg v. Besicorp Group, Inc , 204 F.3d at 400-01 (2nd Cir. 2000); Rogue-Rodriguez v. Lema Moya, 926 F.2d 39, 41 (6th Cir. 1984); Denly v. Shearson/Am. Express, Inc., 733 F.2d 39, 41 (6th Cir. 1984). The thirty-day clock restarts after the order denying the motion to alter or amend the judgment. Fed. R. App. P. 4(a)(4)(A).

Schneller had thirty days to file a notice of appeal from the order denying his Motion for Reconsideration but he failed to do so. He filed his "Motion for Leave to Appeal in Forma Pauperis" on October 8, 2009. His formal Notice of Appeal was not filed until December 2, 2009. Neither filing was made within the required thirty day timeframe. Thus, the Court of Appeals properly declined to exercise jurisdiction over Schneller's appeal.

Schneller argues that his post-judgment motions should have tolled his time for filing a notice of appeal. However, this argument is meritless since his subsequent motions to supplement the record pursuant to Fed. R. Civ. P. 11 and 15(a) and for sanctions and costs pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. 1927 do not fall within the subset of post-judgment motions which toll the time for filing a notice of appeal. See Fed. R. App. P. 4(a)(4)(A)[1]. Thus, the Circuit Court properly did

[1] If a party timely files in the District Court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: (i) for judgment

not exercise jurisdiction over the District Court's June 26, 2009 opinion and order dismissing the Complaint or the August 4, 2009 order denying the motion for reconsideration.

### 1. Even if the Court of Appeals had found jurisdiction over Schneller's appeal, the District Court properly dismissed the Complaint for lack of subject matter jurisdiction and untimeliness.

Schneller argues that the Court of Appeals decided in a way that conflicts with the United States Constitution and other decisions of the Appeals Court and This Honorable Court. Even if the Circuit Court had found jurisdiction over The District Court, the Order dismissing Schneller's Complaint was appropriate. In fact, the dismissal of Schneller's actions from the Complaint was

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under rule 50(b); (ii) to amend or make additional factual findings under Rule 52(b); (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58; (iv) to alter or amend the judgment under Rule 59; (v) for a new trial under Rule 59; (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the Judgment is entered. Fed. R. App.P. 4(a)(4)(A) i-vi.

required for a variety of reasons. Schneller failed to establish diversity jurisdiction, and moreover, he has failed to set forth a federal question.

Federal courts are of limited jurisdiction and may only decide cases authorized by Congress or the Constitution. There are two types of jurisdiction which the district court need: jurisdiction over the person, and subject matter jurisdiction. Subject matter jurisdiction arises when a federal question is involved, see 28 U.S.C. §1331, or when there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000. See 28 U.S.C. §1332(a); Menan Co. v. Atl. Mut.Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, L.Ed. 435 (1806)).

There is no issue of whether the District Court had jurisdiction over all defendants in this case. Thus, the issue on appeal is whether the District Court properly found that it lacked subject matter jurisdiction. Schneller and eleven Defendants are residents of Pennsylvania. Thus, complete diversity of citizenship is clearly lacking. Accordingly, the District Court properly found that it could not base subject matter jurisdiction on diversity of citizenship under 28 U.S.C. §1332(a).

Moreover, Schneller failed to present a sufficient federal question in accordance with 28 U.S.C. §1331. Federal jurisdiction exists in one of two circumstances: "(1) where federal law creates the cause of action; or (2) the complaint poses a substantial federal question." Sodi v. Discover Financial Services, 2004 U.S. Dist. LEXIS 24133, 8 (E.D.Pa.2004). "The presence or absence of federal-question jurisdiction is governed by the 'well pleaded complaint rule', which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Berne Corp. v. Government of the Virgin Islands, 570 F3d 130, 136 (3d. Cir. 2009). "For purposes of federal question jurisdiction, a claim arises under federal law if it is apparent from the face of the complaint that a cause of action was created by federal law." Rokhvarg v. Dep't of Cmty. Affairs, 2010 U.S. App. LEXIS 2243 at 3 (3d Cir. 2010).

Schneller attempted to set forth a federal cause of action to the extent that he alleged a violation of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. §14401, et seq. However, this Act does not create a private right action, and thus does not support federal question jurisdiction. To determine whether Congress intended to create a private cause of

action under a federal statute, one should examine the language and circumstances surrounding its enactment. See Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 15 (1979). Whether a statute creates a particular cause of action, "either expressly or by implication is basically a matter of statutory construction." Id. There is no private cause of action under this statute either expressly or by implication.

Schneller also asserted civil claims against Respondents including under 42 U.S.C. §§ 1983, 1985 and 1986. In Count1B, Schneller asserts civil claims alleging deprivations of life, liberty and property. In Counts 1C, 1D and 1E of the Complaint, Schneller attempts to set forth civil rights claims against Respondents for violations of Fourteenth Amendment rights.

In order to establish a prima facie case under 42 U.S.C. §1983, a plaintiff must demonstrate "(1) a person deprived him of a federal right; and (2) a person who deprived him of that right acted under color of state or territorial law." Groman v. Township of Manalapan, 47 F.3d 628, 633, n.4 (3d Cir. 1995) (citing Gomez v. Toledo, 446 I.S. 635, 640 (1980)). Schneller failed to satisfy these requirements. A private actor may cause a deprivation of a constitutional right, however

said actor is only subject to liability under Section 1983 when it does so under color of state law. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). In the case *sub judice*, the alleged actions of Respondents were not performed under color of state law, and thus they cannot be considered state actors. As Schneller failed to establish a cause of action under 42 U.S.C. §1983 or related statutes, a basis of for federal question jurisdiction does not exist.

In addition to the lack of appropriate federal question jurisdiction, the federal claims were also barred by the applicable two year Statute of Limitations. Since the federal statutes in issue did not incorporate specific Statutes of Limitations, Pennsylvania's two year limitations period is applicable. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 124 (2005). (Where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action may be brought, federal courts apply the statute of limitations governing suits for personal injury in which the action arises). Moreover, actions brought under 42 U.S.C. §§ 1983, 1985 and 1986 are subject to the statute of limitations prescribed for personal injury actions in the state in which the relevant actions occurred. See Lake v. Arnold, 232 F.3d 360, 368 (3d Cir.

2000). Schneller is well beyond the applicable statutory period, as this cause of action arises out of his mother's death on March 31, 2002 and the events preceding that date.

Accordingly, the District Court did not abuse its discretion or commit an error of law by dismissing Schneller's Complaint based on lack of subject matter jurisdiction and untimeliness.

**2. The District Court correctly refused to assert supplemental jurisdiction over Petitioner's state law claims because it had no subject matter or diversity jurisdiction on which to base supplemental jurisdiction.**

The District Court had the right and ability to accept supplemental jurisdiction over the remaining state law claims. If a complaint pleads both federal law and state law claims, and the court has subject matter jurisdiction over the federal claims, it may choose to exercise supplemental jurisdiction over the remaining state law claims. See 28 U.S.C. §1367(a). Further, the state court claims were barred by Pennsylvania's two year Statute of Limitations for personal injury matters (other than the breach of contract claim which has no

viability in a medical malpractice case under Pennsylvania law. Edwards v. Germantown Hospital, 1999 Pa. Super. 192, 736 A.2d 612 (1999)). Here, the District Court properly found that it lacked subject matter jurisdiction over any of Schneller's alleged federal claims. Thus, there was no original jurisdiction on which supplemental jurisdiction could attach. Accordingly, the District court correctly refused to exercise supplemental jurisdiction over Schneller's state law claims.

B. THE COURT OF APPPEALS PROPERLY AFFIRMED PETITIONER'S THE DISTRICT COURT'S DENIAL OF HIS MOTION TO SUPPLEMENT THE RECORD SINCE PETITIONER WAS NOT ENTITLED UNDER ANY COURT RULE TO FILE A REPLY.

The Third Circuit Court of Appeals correctly affirmed the District's Court's denial of Schneller's 'Motion to Supplement the Record' because the District Court was not obligated to permit Schneller's reply under any rule.

Schneller argued in his Motion to Supplement the Record that he should have been permitted more time to respond to opposition to his Motion for Reconsideration, relying on Fed.R.Civ.P. 15(a). Under

Fed.R.Civ.P. 15(a), a party is allowed twenty days in which to amend a pleading as matter of course. See former Fed.R.Civ.P. 15(a) (amendment effective December 1, 2009). However, a Motion for Reconsideration is not considered a pleading pursuant to Fed.R.Civ.P. 59(e). See Fed.R.Civ.P. 7(a). Furthermore, Judge Stengel's procedures do not permit reply briefs to be filed without leave of Court. Thus, the Court was not required by any rule to permit further reply by Schneller. Furthermore, Schneller provided no basis in his Motion for Reconsideration nor his attached proposed reply supporting that a reply would have affected the District Court's decision.

### C. THE COURT OF APPPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DENIAL OF HIS MOTION FOR SANCTIONS SINCE THIS MATTER SHOULD HAVE BEEN ADDRESSED ON APPEAL.

The Third Circuit Court of Appeals properly affirmed the District Court's Denial of Schneller's Motion for Sanctions because appeal was the appropriate vehicle for his allegations, not said motion. Schneller makes arguments of falsity in his Motion for Sanctions that were on the merits and appropriate for an appeal to the dismissal. However, Schneller failed to timely appeal the District Court's dismissal and denial of his motion for reconsideration.

Moreover, the factual record supports the finding that the District Court properly denied Schneller's Motion for Sanctions and Costs Pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. §1927. Under Federal Rule of Civil Procedure 11, an attorney certifies by signing, filing submitting and later advocating a pleading, written motion or other paper that to best of their knowledge, information and belief, after inquiry reasonable under the circumstances that:

> (1) it is not being presented for any improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support, or if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or if specifically so

> identified, are reasonably based on belief or a lack of information.
>
> Fed. R. Civ. P. 11(b)

Moreover, any attorney who "multiplies the proceedings in any case unreasonably in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C.S. §1927.

Schneller claims that all defendants created "vexatious, frivolous, unsupported and dilatory litigation". Schneller has not demonstrated that Respondents have "multiplied the proceeding unreasonably and vexatiously" by filing unnecessary motions and pleadings. He has not demonstrated that Respondents aimed to harass him and increase costs by simply defending against his filings, made frivolous arguments or other unwarranted factual and/or legal contentions. All acts taken by Respondents in this appeal were necessary to preserve their rights. Respondents were as accurate as possible in presenting any facts or argument to the Court. Respondents have been subjected to costly and unnecessary litigation due to Schneller's multitude of frivolous lawsuits in numerous courts and jurisdictions. Since Schneller has not demonstrated that Respondents made arguments or filings for improper purposes or for the purpose of misleading the court, the Court of Appeals properly upheld the District

Court's denial of Schneller's Motion for Sanctions.

### D. IT IS ESTABLISHED LAW THAT *PRO SE* PETITIONER MAY NOT LITIGATE TORTS ON BEHALF OF OTHERS.

Schneller has proceeded *pro se* from the inception of the action, purporting to bring the action of behalf of himself and others. In his Complaint, he claims to represent: (1) Heirs and beneficiaries of Marjorie C. Schneller, by James D. Schneller, trustee ad litem; (2) Estate of Marjorie Schneller, by and through James D. Schneller, trustee ad litem; and (3) Marjorie Zitomer, executrix of the Estate of Marjorie Schneller (Miss Zitomer is Mr. Schneller's sister and also defendant in this action).

Schneller argues that he is entitled to represent the deceased, and the Court of Appeals was prejudiced by his efforts to do so. However, it is well-settled that a *pro se* litigant is not permitted to represent the interests of other parties. See Osei-Afrivie v. Med. Coll. Of Pa., 937 F.2d 876, 882-83 (3d Cir. 1991). "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct cases therein." 28 U.S.C. §1654. A litigant in federal court has a right to act as his or her own counsel. Id., citing to Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59 (2d Cir. 1990); See also 28 U.S.C.

§1654. The statutory right to proceed pro se reflects a respect for the individual citizen to plead his or own cause. The right to conduct one's own litigation "is a right of high standing, not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case." Id.

In a related case the Third Circuit noted, "Schneller filed his complaint *pro se*. He also purports to represent other persons and entities. Although Schneller is entitled to represent himself pro se, he may not appear *pro se* in the cause of another person or entity." Schneller et al. v. Crozer Chester Medical Center, et al, 276 Fed. Appx. 169, 170 n.1 (3d. Cir. 2008). While Schneller is entitled to represent himself pro se in this matter, he may not appear *pro se* on behalf of the other parties.

## E. THE COURT OF APPEALS CORRECTLY DENIED PETITIONER'S PETITION FOR A REHEARING *EN BANC*

The Court of Appeals properly denied Schneller's Petition for Rehearing *En Banc on* April 2, 2010. Under Federal Rule of Appellate Procedure 35, a hearing or rehearing en banc may be ordered by a court of appeals. An *en banc* hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) *en banc* consideration is necessary to secure or

maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance. Fed. R. App. P. 35. Schneller's Petition for Reargument *En Banc* contained the same arguments that were previously before the Court and presented no newly decided case law or exceptional issues. The decisions of the District Court and the Court of Appeals already disposed of all the relevant issues. Schneller has failed to demonstrate why the Court of Appeals made a reversible error in its decision to deny his application for rehearing *en banc*.

## F. THIS HONORABLE COURT LACKS JURISDICTION

Schneller's Petition for Writ of Certiorari should be denied because this Court lacks jurisdiction. There is no basis for Jurisdiction in the United States Supreme Court. Schneller fails to set forth any basis in his Petition for Writ of Certiorari. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, The Court of Appeals for the Third Circuit properly dismissed Schneller's Appeal from the District Court's dismissal of the Schneller's Complaint in its entirety; this action did not decide an important federal

question. Schneller failed to file a Notice of Appeal in a timely matter. The District Court's findings do not present an unsettled important question of federal law. The District Court did not decide an important question of federal law or decide an important federal question in a way that conflicts with relevant decisions of this Court. Schneller's dissatisfaction with the Court of Appeals' refusal to hear Schneller's appeal of the District Court's Order does not warrant granting Certiorari. Therefore, there is no basis for jurisdiction in this Court.

## VII. CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to deny the Petition for Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____

PAUL C. TROY, ESQUIRE
Attorney I.D. No. 69875
Attorney for Respondents Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire

## CERTIFICATE OF SERVICE

I, Paul C. Troy, certify that two true and corrected copies of the Response of Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire to the Petition for Writ of Certiorari filed by Petitioner, James D. Schneller were served on all parties via U.S. First Class Mail, postage prepaid on September 21, 2010, as follows:

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KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____
PAUL C. TROY, ESQUIRE
Attorney I.D. No. 60875
Attorney for Respondents Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire

Certificate under Rule 33.1(h)

I, Paul C. Troy, certify that the Response of Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire to the petition for a writ of certiorari filed by Petitioner, James D. Schneller complies with the word limitations. The Response to the petition for a writ of certiorari contains 5,432 words.

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____

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